

### **REMARKS**

In the Final Office Action, the Examiner rejected claims 1-22, 24, and 25. By this paper, Applicants have amended claim 22. This amendment does not add any new matter and support for the amendment may be found at least by viewing FIG. 2, with specific attention to reference numerals 12, 14, and 16, as well as page 10, lines 18-21 of the originally filed specification. Upon entry of this amendment, claims 1-22, 24, and 25 remain pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendment and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

### **Claim Rejection Under 35 U.S.C. § 112, Second Paragraph**

In the Final Office Action, the Examiner rejected claim 22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended claim 22 to correct any antecedent basis problems. It is respectfully submitted that the amendment to claim 22 overcomes the Section 112 rejection set forth by the Examiner. As such, Applicants respectfully request withdrawal of the rejection of claim 22 under 35 U.S.C. § 112, second paragraph.

### **Claim Rejections under 35 U.S.C. § 102**

In the Final Office Action, the Examiner rejected claims 17-19 under 35 U.S.C. § 102(e) as anticipated by Scheinert et al., U.S. Patent No. 7,117,015 (hereinafter "Scheinert"). Applicants respectfully traverse this rejection.

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under Section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du*

*Pont*, 750 F.2d 1569 (Fed. Cir. 1984). The prior art reference also must show the *identical* invention “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

### ***Omitted Features of Independent Claim 17***

Scheinert fails to anticipate all elements of independent claim 17. Independent claim 17 recites, *inter alia*, “at least one routine for facilitating communication of information over an undedicated public network between at least one base station, which is adapted to communicate over an air interface with portable communications devices, and a controller.” (Emphasis added.)

In the Final Office Action, the Examiner read an internet base station (IBS) 42 of Scheinert as analogous to the at least one base station recited in independent claim 17. *See* Final Office Action, page 4. Moreover, the Examiner suggested that the IBS 42 of Scheinert facilitated communication of information over the internet 47, read to be the undedicated public network recited in independent claim 17. Applicants respectfully disagree with this reading of Scheinert.

Scheinert specifically discloses the use of at least one base station 22 separate from the at least one IBS 42. *See* Scheinert, FIG. 5. Moreover, this base station 22 is disclosed to connect to a base station controller 26 via a dedicated line 25. *See* Scheinert, FIG. 5, col. 5, lines 4. Indeed, Scheinert specifically discloses that the IBS 42 is not a conventional base station (e.g. base station 22) that relies on dedicated connections to connect to the public switched telephone network, but rather supplements the disclosed base station 22. *See* Scheinert, col. 5, lines 1-13. That is, Scheinert specifically discloses a base station 22 as a separate and distinct element from an IBS 42.

Applicants note that M.P.E.P. Section 2141.02 states that “[a] prior art reference must be considered in its entirety, i.e., as a whole.” (Emphasis original.) Thus, the Examiner is not free to read a portion of a reference in a manner that contradicts other portions of the reference. For example, the Examiner is not free to read an IBS 42 to be a base station when Scheinert clearly and explicitly discloses a separate element to be a base station 22. To do so is to fail to consider Scheinert in its entirety, as set forth in M.P.E.P. Section 2141.02.

Scheinert read as a whole (i.e., in its entirety) teaches away from the interpretation made by the Examiner that an IBS 42 may be read as a base station since Scheinert specifically discloses a base station 22. As such, the IBS 42 of Scheinert cannot be read as the base station recited in independent claim 17. Moreover, while the base station 22 of Scheinert may be interpreted to be analogous to the base station recited in independent claim 17, each of the plurality of base stations 22 of Scheinert are connected to a base station controller 26 via a dedicated line (see Scheinert, FIGS. 2 and 5; col. 2, lines 5-9 and 17-19). Thus, Scheinert cannot be read as disclosing facilitating communication between a base station and a controller “over an undedicated public network,” as recited in independent claim 17 since a connection that facilitates communication over a dedicated line cannot be read as a connection that facilitates communication over an undedicated public network. Therefore, Scheinert cannot be read as disclosing all elements of independent claim 17.

For at least the reasons set forth above, Scheinert cannot anticipate independent claim 17 under Section 102. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of independent claim 17, as well as all claims depending therefrom.

#### **Claim Rejections under 35 U.S.C. § 103(a)**

In the Final Office Action, the Examiner rejected claims 1-5, 8-12, 15, 20-22, 24, and 25 under 35 U.S.C. § 103(a) as unpatentable over Scheinert in view of Hamleers et al., U.S. Patent

No. 6,760,325 (hereinafter “Hameleers”), claims 13 and 14 as unpatentable over Scheinert in view of Hameleers as applied to claims 1, 11, and 12, and further in view of Searle et al., U.S. Patent No. 5,603,089 (hereinafter “Searle”), claim 16 as unpatentable over Scheinert in view of Hameleers as applied to claims 1 and 15, and further in view of Ketonen, U.S. Patent No. 6,104,917 (hereinafter “Ketonen”), and claims 6 and 7 as unpatentable over Scheinert in view of Hameleers as applied to claim 2, and further in view of Kowalski et al., U.S. Patent No. 6,631,410 (hereinafter “Kowalski”). Applicants respectfully traverse these rejections.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002).

***Omitted Features of Independent Claim 1,***

Scheinert in view of Hameleers fails to teach all elements of independent claim 1. Independent claim 1 recites, *inter alia*, “a communication interface, coupled to the antenna, and configured to facilitate communication between the base station and an access network unit over

an undedicated public network, wherein the communication between the base station and the access network unit is independent of a dedicated connection.” (Emphasis added.)

In the Final Office Action, the Examiner admitted that Scheinert fails to teach communication between a base station and a access network unit “independent of a dedicated connection,” as recited in independent claim 1. *See* Final Office Action, page 6. To obviate this deficiency, the Examiner relied upon Hameleers. *See id.* Applicants have reviewed the cited portions of Hameleers and are unable to find any teaching in Hameleers of communication between the base station and the access network unit “independent of a dedicated connection,” as recited in independent claim 1. For example, Hameleers appears to teach a base station controller 14 and a base transceiver station 8 that may communicate along a device protocol connection 13. *See* Hameleers, FIG. 1; col. 4, lines 1-8 and col. 6, lines 14-17 and 28-33. However, Hameleers fails to teach that the device protocol connection 13 between the base station controller 14 and a base transceiver station 8 is not a dedicated connection. That is, there is no teaching in Hameleers that the device protocol connection 13 is not a connection dedicated to device control protocol transmitted between a particular base station controller (i.e., base station controller 14) and a particular base transceiver station (i.e., base transceiver station 8). As such, Hameleers cannot be read as teaching communication between the base station and the access network unit “independent of a dedicated connection,” as recited in independent claim 1.

Therefore, Hameleers fails to overcome the admitted deficiencies of Scheinert with respect to independent claim 1. As such, Scheinert, in view of Hameleers, cannot render independent claim 1 obvious under Section 103. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of independent claim 1, as well as all claims depending therefrom.

***Omitted Features of Independent Claim 20***

Scheinert in view of Hameleers fails to teach all elements of independent claim 20. Independent claim 20 recites, *inter alia*, “transmitting the information packet from the base station to the access network unit independent of a dedicated connection.” (Emphasis added.)

In the Final Office Action, the Examiner admitted that Scheinert fails to teach transmitting an information packet from a base station to a access network unit “independent of a dedicated connection,” as recited in independent claim 20. *See* Final Office Action, page 7. To obviate this deficiency, the Examiner relied upon Hameleers. *See id.* Applicants have reviewed the cited portions of Hameleers and are unable to find any teaching in Hameleers of transmitting an information packet from the base station to the access network unit “independent of a dedicated connection,” as recited in independent claim 20. For example, Hameleers appears to teach a base station controller 14 and a base transceiver station 8 that may communicate along a device protocol connection 13. *See* Hameleers, FIG. 1; col. 4, lines 1-8 and col. 6, lines 14-17 and 28-33. However, Hameleers fails to teach that the device protocol connection 13 between the base station controller 14 and a base transceiver station 8 is not a dedicated connection. That is, there is no teaching in Hameleers that the device protocol connection 13 is not a connection dedicated to device control protocol transmitted between a particular base station controller (i.e., base station controller 14) and a particular base transceiver station (i.e., base transceiver station 8). As such, Hameleers cannot be read as teaching transmitting an information packet from the base station to the access network unit “independent of a dedicated connection,” as recited in independent claim 20.

Therefore, Hameleers fails to overcome the admitted deficiencies of Scheinert with respect to independent claim 20. As such, Scheinert, in view of Hameleers, cannot render independent claim 20 obvious under Section 103. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of independent claim 20, as well as all claims depending therefrom.

***Omitted Features of Dependent Claims 2-16, 21-22, and 24-25***

Each of dependent claims 2-16, 21-22, and 24-25 depend from independent claim 1 or 20, respectively. Based at least upon their respective dependencies from allowable independent claims 1 and 20, as well as for the elements individually recited in each of dependent claims 2-16, 21-22, and 24-25, Applicants respectfully submit that the cited art of record fails to teach each element of dependent claims 2-16, 21-22, and 24-25. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1-16, 10-22, and 24-25 under 35 U.S.C. § 103(a).

**Conclusion**

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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